REMARKS

Reconsideration of this application in view of the above amendments and following remarks is respectfully requested. Claims 1-16, 19-22, 25-47, 50, 53-56, and 59-81 are now pending. Claims 1, 35 and 73 have been amended to remove the phrase "polypeptide." Claims 82-84 have been canceled. No new matter is being introduced. Applicants request entry of these amendments because they do not raise new issues for search or further consideration.

Claim Rejections – 35 USC § 103

Claims 1-16, 19-22, 25-47, 50, 53-56, and 59-84 are rejected under 35 U.S.C.(a) as obvious over US Patent No. 5,162,430 ("Rhee") in view of US Patent No. 5,505,952 ("Jiang").

The above rejections are set forth in the Office Action at pages 3-4 and are not repeated herein for the purpose of brevity. Rather, Applicants wish to focus on the Examiner's comments under the heading "Response to Arguments" on page 4 of the Office Action.

First, Applicants will address Item 5 of the Office Action. The Examiner states "although polyethylene oxide or polyethylene glycol is synthetic, claims 1, 35 and 73 do not require that polypeptide to be synthetic." The Examiner thus considers that Rhee and Jiang in combination render these claims obvious because Jiang discloses that crosslinked polyamino acid promotes tissue repair and tissue growth.

To facilitate allowance and without acquiescing to the Examiner's position, Applicants have deleted the phrase "polypeptides." Accordingly, claims 1, 35, and 73 (as amended) are directed to a synthetic crosslinking system of two functionalized polyalkylene oxide components. These features are not obvious over Rhee and Jiang because neither Rhee nor Jiang describes or suggests such a synthetic crosslinking system. Rather, as acknowledged by the Examiner, Rhee teaches collagen and does not teach polyalkylene oxide having amino or thiol functional groups (*see*, lines 1-3 on page 4 of the Office Action). Jiang is limited to crosslinking polyamino acid with small molecules (as opposed to polymers). Because the Office Action has not established a *prima facie* case of obviousness, claims 1, 35 and 73, as amended, are patentable over the cited references.

Second, in Item 6 of the Office Action, the Examiner maintains that the patentability of the examined claims in the present application is not based on the issued claims of the parent application 09/932,536 ("the parent application"), which issued as U.S. Patent No. 6,534,591 ("the '591 patent"), despite that the examined claims are methods of using Applicants' own patented products. In particular, the Examiner states that "because the method claims and the issued product claims are not in one application such that the rejoinder requirement of *In re Ochiai* does not apply."

Applicants respectfully submit that *In re Ochiai* applies because the method claims of the present application were in fact first presented in the parent application that ultimately issued as the '591 patent. Attached for the Examiner's reference is a copy of a Preliminary Amendment filed in the parent application. The Examiner's attention is drawn to claims 101-108. Claims 101-103 are directed to a method for preventing the formation of adhesion following surgery or injury by using a crosslinked product that was encompassed by product claims ultimately issued in the '591 patent. In addition, claims 104-108 are directed to a method for effecting augmentation of tissue using the same crosslinked product. By a Restriction Requirement dated July 17, 2002, the claims entered in the Preliminary Amendments were restricted into 13 inventions, including Group (V), drawn to claims 101-103 and Group (VI), drawn to claims 104-108. Claims 101-108 were canceled in the parent application as directed to non-elected inventions. They were later filed in the present application.

According to TRAINING MATERIALS FOR TREATMENT OF PRODUCT AND PROCESS CLAIMS IN LIGHT OF IN RE BROUWER AND IN RE OCHIAI (MPEP Guidelines), a process claim must be fully examined to determine whether the requirements of 35 U.S.C. 101, 102, 103 and 112 have been met. However, the Training Material further states that "if the process claim includes all the limitations of the allowable product, it is unlikely that a rejection over prior art could be made if the prior art were properly cross-referenced…"

Applicants submit that the pending claims contain all of the limitations of the patented product of the '591 patent. In addition, the pending claims satisfy 35. U.S.C § 112 requirements since all previous rejections based on same have been withdrawn. Finally, Rhee has been previously considered in the parent application and was deemed overcome. Applicants

submit that, because the claimed method is directed to using a patented product and contains all the limitations of a product claim already granted in the '591 patent, the claimed method is patentable over the prior art references (*i.e.*, Rhee) cited in the '591 patent.

In conclusion, Applicants submit that the pending claims are not obvious in view of Rhee and Jiang because the Office Action has failed to establish a prima facie case of obviousness. In any event, the pending process claims are patentable over Rhee because they contain all the limitations of the granted product claims (of the '591 patent), which have been previously determined to be patentable over Rhee.

The Director is authorized to charge any additional fees due by way of this Amendment, or credit any overpayment, to our Deposit Account No. 19-1090.

All of the claims remaining in the application are now clearly allowable. Favorable consideration and a Notice of Allowance are earnestly solicited.

Respectfully submitted,

SEED Intellectual Property Law Group PLLC

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HXH:trl

Enclosure:
Preliminary Amendment filed August 17, 2001 in U.S. Patent Application Serial No. 09/733,739 (the Parent Application).

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